

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Thomas Corey Payne, and Kayla Harris,)
Individually and on Behalf of All Others)
Similarly Situated,)
Plaintiffs,)
vs.)
Amazon.com, Inc.,)
Defendant.)
)

**DECLARATION OF GIANMARCO
VAIRO**

C.A. No. 2:17-cv-2313-PMD

Pursuant to 28 U.S.C. § 1746, I, Gianmarco Vairo, declare the following statements to be true under the penalties of perjury:

1. I am employed as a Paralegal in the Litigation and Regulatory department of Amazon.com, Inc. (“Amazon”). My current responsibilities include gathering and producing documents and business records in litigation on behalf of Amazon. Based on my review and knowledge of Amazon’s business records, I am familiar with and recognize the screenshots, agreements and customer histories discussed in this declaration. I make this declaration based on personal knowledge and Amazon’s business records generated and maintained in the ordinary course of business, including information obtained by other Amazon personnel in the course of their duties on whom I regularly rely in the course of my job responsibilities. I am competent to testify to matters stated herein.

2. Amazon.com is an online retail website and marketplace through which consumers may purchase hundreds of millions of unique products.

3. Amazon allows third parties to sell goods through its e-commerce marketplace.
4. Amazon's site is governed by its Conditions of Use. Amazon's Conditions of Use have contained an arbitration agreement and class action waiver since August 19, 2011.
5. In order to make a purchase on Amazon.com or through Amazon's related services, like its mobile application or Amazon Echo, a customer must create an Amazon account or use an existing account. Unlike some other e-commerce websites, it is not possible to check out as a "guest" on Amazon.com. A customer must use a registered account.
6. Use of an existing account requires submission of the account's username and password.
7. According to Amazon's records, on December 19, 2016, an account in the name of Kayla Harris was created (the "Harris Account"). Attached as Exhibit A are true and correct copies of Amazon account records for the Harris Account, including Prime subscription details and order details. The email linked to that account is kayladharrs828@icloud.com.
8. In order to create an account, customers must accept the Conditions of Use. Attached as Exhibit B is a true and correct copy of an example of the account creation screen. The account creation screen for Amazon includes express language directly beneath the orange "Create your Amazon account" button notifying customers that "By creating an account, you agree to Amazon's [Conditions of Use](#) and [Privacy Notice](#)." The blue text elements are hyperlinks to Amazon's Conditions of Use and Privacy Notice.
9. Amazon's records further reflect that on March 1, 2017, the Harris Account signed up for an Amazon Prime membership ("Prime"). *See Exhibit A.*

10. Prime offers free two-day, one-day, and same-day shipping options and a number of other benefits, including: unlimited streaming of thousands of movies and TV shows through Prime Video; on-demand, ad-free music streaming through Prime Music; unlimited reading with over a thousand books, magazines, books with Audible narration, comics, Kindle Singles, and more through Prime Reading; unlimited listening to Audible original audio series; free game content, ad-free Twitch viewing, and Twitch Channel Subscription through Twitch Prime; and many other benefits.

11. In signing up for Prime on that date, the Harris Account user had to click an orange button that stated “Try Prime Free,” “Start your 30-day free trial,” “Signup now” or “Confirm” (or similar language indicating that the user was about to start a Prime membership). Beneath that button was language substantially similar to the following:

By signing up, you agree to the [Amazon Prime Terms](#) and authorize us to charge your default payment method or another payment method on file after your 30-day free trial. **Your Amazon Prime membership continues until cancelled. If you do not wish to continue for \$99/year + any taxes, you may cancel at any time by visiting Your Account.**

The blue text element is a hyperlink to the then-current version of the Prime Terms when a user signs up for Amazon Prime using a computer or mobile device. Attached as Exhibit C is a true and correct copy of an example of a sign-up page for Amazon Prime in place in March 2017.

12. Attached as Exhibit D is a true and correct copy of the Prime Terms that were in effect on March 1, 2017. Those Prime Terms stated:

Welcome to the terms and conditions (“**Terms**”) for Amazon Prime. These Terms are between you and Amazon Services LLC and/or its affiliates (“**Amazon.com**” or “**Us**”) and govern our respective rights and obligations. Please note that your use of the Amazon.com website and Prime membership are also governed by the agreements listed and linked to below, as well as all other applicable terms,

conditions, limitations, and requirements on the Amazon.com website, all of which (as changed over time) are incorporated into these Terms. If you sign up for a Prime membership, you accept these terms, conditions, limitations and requirements.

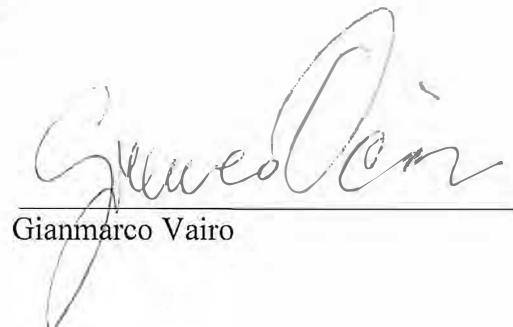
- [Conditions of Use](#)
- [Amazon.com Privacy Notice](#)
- [Amazon Video Terms of Use](#)
- [Amazon Music Terms of Use](#)
- [Amazon Drive Terms of Use](#)
- [Kindle Store Terms of Use](#)

The blue text elements are hyperlinks to the then-current versions of the referenced terms and conditions, including, but not limited to the Conditions of Use.

13. The Harris Account's Prime membership is still active.
14. Attached as Exhibit E is a true and accurate copy of the Conditions of Use that were in effect on December 19, 2016 and March 1, 2017.
15. When making purchases using the standard Amazon.com checkout page, customers have the opportunity to review and confirm their orders and, to complete their orders, must accept the Amazon Conditions of Use. Attached as Exhibit F is a true and correct copy of an example of the current standard Amazon.com checkout page. It shows that to complete a purchase, customers must either (1) click on a "Place Your Order" button to the right of the checkout page, immediately beneath which is the following language: "By placing your order, you agree to Amazon's [privacy notice](#) and [conditions of use](#)" or (2) click on a "Place your order" button at the bottom of the order summary, which has the same language immediately adjacent to it: "By placing your order, you agree to Amazon's [privacy notice](#) and [conditions of use](#)." *Id.* The blue text elements are hyperlinks to Amazon's Privacy Notice and Conditions of Use. A customer cannot place an order through Amazon.com's standard checkout page without

affirmatively clicking on the “Place your order” button. A customer who does not wish to accept the Conditions of Use or the arbitration agreement contained therein may cancel his purchase transaction.

16. Attached as Exhibit G is a true and correct copy of the Conditions of Use that were in effect on August 1, 2017, the date Plaintiff Corey Thomas Payne alleges he purchased the solar eclipse glasses at issue in this case.



Gianmarco Vairo

28th day of January, 2018.